



Implementation of the Environmental Advisory Rules Committee's Recommendations

Water Resources Division

October 2012

Recommendation W-2: Mercury Rule for National Pollutant Discharge Elimination System (NPDES) Permits

The WRD sent a letter to the USEPA, Region 5, dated May 4, 2012 (see Attachment 1), asking that their agency consider revisions to the mercury-related requirements under the Great Lakes Initiative, which are over 15 years old. See Recommendation 2 mentioned in the letter.

Recommendation W-3: Sewerage Systems Rule (COMPLETED)

R 299.2933(4) was rescinded on August 16, 2012.

Recommendation W-5: Nationwide Permitting Approach

HB 5897 was introduced by Representative Stamas and referred to the House Committee on Natural Resources, Tourism, and Outdoor Recreation on September 12, 2012. The bill amends sections of Part 13, Permits; Part 301, Inland Lakes and Streams; Part 303, Wetlands Protection; and Part 325, Great Lakes Submerged Lands, of the NREPA.

Recommendation W-7: Sanitary Sewer Overflows (COMPLETED)

This recommendation has been completed. ORR recommendation W-7 asked that the Part 21 (Wastewater Discharge Permit) rules be revised to direct the DEQ to permit the diversion of separate sanitary flow to a combined sewer Retention Treatment Basin (RTB) for treatment. The intention would be to prevent sanitary sewer overflows (SSOs) and meet state water quality standards. The recommendation also asked that the DEQ permit a system operator under an Administrative Consent Order (ACO) to divert separate sanitary flow to an RTB to provide the operator time to rehabilitate the sanitary sewer collection system (i.e., interim authorization of the diversion).

Based on the Environmental ARC recommendation, the WRD further investigated this issue. As part of this investigation, it asked the USEPA, Region 5, in writing whether federal rules and requirements allow an SSO that is not already tributary to a collection system that is served by a combined sewer overflow (CSO) RTB to be diverted to this RTB as the final SSO correction program (see Attachment 2). Region 5 provided a written response (see Attachment 3), which indicated that this could only be allowed if the RTB's effluent limitations were to be based on federal secondary treatment regulations and any other requirements needed to comply with state water quality standards. Secondary treatment regulations are found in Title 40 of the Code of Federal Regulations, Part 133. Please note that RTBs are not designed to achieve limits based on federal secondary treatment regulations so the WRD believes that these would be very difficult if not impossible requirements to achieve. The WRD has worked with some communities when developing ACOs for SSOs to allow the situation presented under Recommendation W-7 as an **interim** tool to help reduce raw SSOs and improve water quality.

In summary, the DEQ cannot approve final correction of an SSO by diverting it to a CSO treatment facility, unless the RTB is then subject to effluent limits based on federal secondary treatment regulations. However, the WRD has and will continue to allow for this type of diversion in the interim as part of implementation of a final SSO correction program in an ACO.

In addition, as part of the WRD's SSO corrective action plans and consistent with its SSO Policy and Clarification Statement, the WRD has agreed to use enforcement discretion for systems designed to its remedial design event (typically the 25 yr – 24 hr event – 3.9 inches of rain in a 24-hour period), for discharges that occur due to rain events that are greater than our remedial design event. Consistent with this use of enforcement discretion, the WRD has and will continue to allow diversion of SSOs due to extreme rain events that exceed the state remedial design event to a CSO treatment facility, to minimize environmental and public health impacts.

Recommendation W-8: Agricultural Activities under Parts 301 and 303 of NREPA

HB 5897 was introduced by Representative Stamas and referred to the House Committee on Natural Resources, Tourism, and Outdoor Recreation on September 12, 2012. The bill amends Sections of Part 13, Permits; Part 301, Inland Lakes and Streams; Part 303, Wetlands Protection; and Part 325, Great Lakes Submerged Lands, of the NREPA.

Recommendation W-11: NPDES Permitting of Stormwater Runoff at Airports (COMPLETED)

This recommendation has been completed. The WRD's response to Recommendation W-11 is that it needs to continue to issue its industrial storm water general permit (GP) for most airports as the applicable control document. As a requirement of our industrial storm water GP, the Storm Water Pollution Prevention Plan (SWPPP) can be tailored to a particular airport in order to eliminate, if possible, or reduce the discharge of Airport Deicing Fluids (ADF) to acceptable levels based on compliance with the nonstructural and structural controls required in the SWPPP. Though it is stated on page A-86 of the "Recommendations of the Office of Regulatory Reinvention Regarding Environmental Regulations – December 23, 2011" that the GP prohibits the discharge of any ADF in storm water, this is actually not the case.

In accordance with the federal Clean Water Act (CWA) and the NREPA, all NPDES permits require technology-based requirements and if water quality standards are not being met (or would not be met) with their implementation, then more stringent water quality-based requirements must be established. These are the federal requirements under the CWA, so this approach is not more restrictive, but instead consistent, with federal requirements. Therefore, should the industrial storm water GP not adequately protect the receiving waters at a particular airport, the DEQ must develop an individual permit with the necessary effluent requirements/conditions to insure compliance with water quality standards. Actual cases where the WRD has decided to use an individual permit are where actual water quality issues have been documented, such as observed nuisance biofilms or fish kills that have brought to light depressed dissolved oxygen levels. Please note that use of individual permits is also discussed on the federal level. The USEPA's multisector general permit states, "USEPA may require you to apply for and/or obtain authorization to discharge under either an individual NPDES permit or an alternative general permit..."

In summary, use of the Michigan industrial storm water GP requires control plans to be developed. Consistent with the federal CWA, the WRD can (and must) alternatively develop an individual permit that includes protective requirements to meet water quality standards if its GP does not protect water

quality standards. The WRD has used this approach for Detroit Metropolitan Airport and is currently using this approach for the Gerald R. Ford International Airport.

Recommendation W-12: Wetland Mitigation Banks

HB 5897 was introduced by Representative Stamas and referred to the House Committee on Natural Resources, Tourism, and Outdoor Recreation on September 12, 2012. The bill amends Sections of Part 13, Permits; Part 301, Inland Lakes and Streams; Part 303, Wetlands Protection; and Part 325, Great Lakes Submerged Lands, of the NREPA.

Recommendation W-13: Annual Wastewater Report (COMPLETED)

This recommendation has been completed. Public Act 43 of 2012 has repealed the annual wastewater reporting requirement contained in the NREPA and rescinded the corresponding rules. The DEQ's [annual wastewater reporting Web site](#) has been modified to reflect this change.

Recommendation W-15: Coordinating Storm Water Operators for Construction Sites with Local Enforcement of Soil Erosion and Sedimentation Control (SESC) (COMPLETED)

This recommendation has been completed. The WRD did not have to amend R 323.2190 to provide construction site owners the option of utilizing the services of local Part 91 (Soil Erosion and Sedimentation Control of the NREPA) inspectors to fulfill the inspection and compliance reporting requirements.

The WRD did update their "[Training FAQ](#)" found on the [DEQ Soil Erosion Web page](#) (go to www.michigan.gov/degland, select "Soil Erosion and Sedimentation Control," and then "Training FAQ") to include the following:

Can the Construction Storm Water Operator and the SESC inspector duties be performed by the same person on a site?

Yes, if the person performing the inspections is working for a Part 91 Agency, one inspection can count for both Construction Storm Water Operator Requirements and SESC inspector requirements. This situation commonly occurs with Authorized Public Agencies. Private construction sites can utilize the Part 91 Agency Inspector as the Construction Storm Water Operator, if the Part 91 Agency agrees to perform this service. In those cases the SESC inspection would count as a Construction Storm Water inspection and vice versa. *Please note that inspection frequency for Storm Water Operators can be more frequent than that required of Part 91, SESC inspectors. Storm Water Operator inspections must be conducted at least once weekly and within 24 hours of any precipitation event that result in a discharge of storm water from the site.

Recommendation W-19: Mercury Standard for Groundwater (COMPLETED)

This recommendation has been completed. The WRD, in conjunction with the CSI GSI Workgroup, finalized a Department Policy and Procedure titled "[Evaluating Mercury in Groundwater Plumes Relative to the Groundwater/Surface Water Interface Pursuant to Part 201.](#)" Go to www.michigan.gov/deg, select "Key Topics," and then "Policies and Procedures." This policy became effective on June 20, 2012, and allows the use of USEPA Method 245.1 to quantify the level of mercury in groundwater that is venting to surface water as part of an evaluation of the GSI pathway.

In addition, the WRD sent a letter to the USEPA, Region 5, dated May 4, 2012 (see Attachment 1), asking that the USEPA consider revisions to the mercury-related requirements under the Great Lakes Initiative, which are over 15 years old. See Recommendation 1 mentioned in the letter.

ATTACHMENT 1



STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



May 4, 2012

Ms. Tinka Hyde, Director
Water Division
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard (W-15J)
Chicago, Illinois 60604-3507

Dear Ms. Hyde:

On February 23, 2011, Michigan Governor Rick Snyder issued Executive Order 2011-5 creating an Office of Regulatory Reinvention (ORR) within the Michigan Department of Licensing and Regulatory Affairs. The ORR is responsible for creating a regulatory environment that is simple, fair, efficient, and conducive to business growth and job creation in the state of Michigan. The Executive Order required the ORR to submit a written report to the Governor with recommendations concerning existing rules and regulations, and proposed rulemaking and regulatory activities. This report was submitted on December 23, 2011 (http://www.michigan.gov/documents/lara/ORR_-_Environmental_Recommendations_377252_7.pdf). We are seeking your assistance in implementing two recommendations related to mercury regulations established under Title 40 of the Code of Federal Regulations, Part 132, Water Quality Guidance for the Great Lakes System ("Great Lakes Initiative" [GLI]).

Prior to submitting its recommendations to the Governor, the ORR considered recommendations made by the Environmental Advisory Rules Committee (ARC) that was also established as part of the Executive Order. Membership in the Environmental ARC was determined by the ORR and included a broad-spectrum of stakeholders, including manufacturing and utility representatives, environmental consultants and attorneys, a representative of the environmental community, and the Michigan Department of Environmental Quality's (MDEQ) Director of Policy and Legislative Affairs.

The final report to the Governor includes recommendations to Michigan's environmental statutes, rules, non-rule regulatory actions, regulatory processes, and engagement with stakeholders. The following are two recommendations in the report:

Recommendation 1:

"The groundwater/surface water interface criterion/wildlife protection value for mercury of 1.3 ng/l was adopted from the Great Lakes Initiative. The criterion should be recalculated using current toxicological methods. The criterion is lower than ambient concentrations in most inland waters. DEQ should work with the USEPA to revise the GLI with respect to the groundwater/surface water interface criterion/wildlife protection value for mercury of 1.3 ng/l, by applying current science."

Recommendation 2:

"Allow an NPDES permittee with a water quality-based effluent limit (WQBEL) for mercury in the permit to account for inlet loading concentration when their contribution to the effluent is negligible. Language should be added to R 323.1211(7)(a) that states: If the mean effluent concentration is less than 10% greater than the mean inlet concentration (using 24 consecutive months of monitoring data) and does not exceed the mean inlet concentration by more than 0.5 PPT, then the permittee should be exempt from the PMP requirements and subject to annual monitoring."

The MDEQ agreed to pursue regulatory changes related to both recommendations. Because these regulations are based on the GLI, which are more than 15 years old, we are requesting the United States Environmental Protection Agency (USEPA) consider revisions to the GLI.

In regards to the first recommendation, new scientific information related to establishing mercury water quality standards is available and could alter the current wildlife value for mercury. However, we understand that modification of the wildlife value for mercury would have little impact on the groundwater/surface water interface criterion or any subsequent WQBEL based on this criterion, since the human health value is similar to the wildlife value. We therefore recommend that the human health value for mercury also be reexamined.

The second recommendation stems from the fact that air emissions are the greatest source of mercury to Michigan's aquatic resources. We therefore request that the USEPA reevaluate all mercury-related requirements under the GLI and make appropriate changes based on new science and consideration for control of sources that have the greatest impact on aquatic sources. This includes evaluating the appropriateness of the suggested 10 percent and 0.5 PPT endpoints outlined in Recommendation 2.

Should you require further information, please contact Ms. Sylvia Heaton, Surface Water Assessment Section, Water Resources Division, at 517-373-1320, or you may contact me.

Sincerely,



William Creal, Chief
Water Resources Division
517-335-4176

cc: Ms. Linda Holst, Region 5, USEPA
Mr. David Pfeifer, Region 5, USEPA
Ms. Jamie Clover Adams, Director of Policy and Legislative Affairs, MDEQ
Ms. Diana Klemans, MDEQ
Mr. Gary Kohlhepp, MDEQ
Ms. Sylvia Heaton, MDEQ

ATTACHMENT 2



STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



April 12, 2012

Ms. Tinka Hyde, Director
Water Division
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard (W-15J)
Chicago, Illinois 60604-3507

Dear Ms. Hyde:

The purpose of this letter is to request the interpretation by the United States Environmental Protection Agency (USEPA), Region 5, of federal rules and requirements pertaining to a specific question regarding sanitary sewer overflows (SSO) and combined sewer overflows (CSO). Specifically, the Michigan Department of Environmental Quality (MDEQ) has worked to operate under the interpretation that federal rules do not allow an SSO that is not already tributary to a permitted combined sewer outfall to be routed to a CSO treatment facility as the final SSO correction program. However, municipalities and others continue to question this interpretation. Therefore, we would like the input of Region 5 at this time.

Our position centers on the interpretation that for a sanitary sewer system, the publicly owned treatment works (POTW) (as defined in Section 403.3 of the federal Clean Water Act (CWA)) includes the collection system and, as such, the CWA requires limits based on secondary treatment standards (or any more stringent requirements based on meeting water quality standards). This definition states, "POTW means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a 'State' or 'municipality'. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment."

A separate sanitary collection system is by design a closed system, so it is only intended to convey wastewater to a POTW. Therefore, the DEQ deems a separate sanitary collection system to be part of the POTW, and that the discharge from a POTW must meet secondary treatment requirements (or any more stringent requirements to meet water quality standards) or be eliminated. As an aside, the DEQ sets forth what constitutes "elimination" in our SSO Policy Statement and SSO Clarification Statement, and enforceable documents have been entered that require SSO correction programs for many communities across the state.

On the other hand, a combined sewer collection system is not part of the POTW as defined under the CWA and its associated regulations. It is an open system by design that allows discharges from the system. The 1994 USEPA CSO Policy reads, in part, "A CSO is the discharge from a combined sewer system at a point prior to the POTW Treatment Plant. CSOs are point sources subject to the NPDES permit requirements including both technology-based and water quality-based requirements of the CWA. CSOs are not subject to secondary treatment requirements applicable to POTWs." The Wet Weather Water Quality Act of 2000 amended the CWA to provide that each permit, order, or decree issued after December 15, 2000, for a discharge from a combined sewer shall conform to the CSO Control Policy. The MDEQ addresses CSO control programs consistently with the CWA, and as set forth in the

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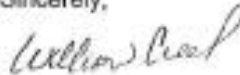
Ms. Tinka Hyde
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Michigan CSO Control Program Manual (1994) and subsequent state documents. CSOs in Michigan must be controlled to meet as technology-based requirements the nine minimum controls, and as water quality-based requirements adequate treatment to meet all water quality standards at times of discharge.

In summary, our interpretation to date has been that an SSO is a discharge from a POTW and, as such, must either be controlled to meet secondary treatment requirements or eliminated (consistent with the MDEQ's SSO Policy Statement and Clarification Statement). We believe that simply correcting an SSO by connecting it to a combined sewer system treatment system does not meet federal requirements under the CWA. This incremental SSO discharge would not meet secondary treatment requirements if discharged from a CSO Retention Treatment Basin nor be eliminated, in Michigan's case, consistent with the MDEQ's SSO Policy Statement and Clarification Statement. The law does not appear to specifically state that this type of correction is not allowed, but it also does not appear to overtly authorize it either.

We appreciate and request your interpretation. If you need any additional information or wish to discuss this, please contact me. Alternatively, you may also contact either Mr. Pete Ostlund at 517-373-1982 or Mr. Phil Argiroff at 517-241-1341.

Sincerely,



William Creal, Chief
Water Resources Division
517-335-4176

cc: Mr. Pete Ostlund, MDEQ
Mr. Phil Argiroff, MDEQ
Mr. Dave Fiedler, MDEQ

ATTACHMENT 3



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 31 2012

REPLY TO THE ATTENTION OF:

WN-16J

WATER RESOURCES DIVISION
JUN 07 2012

William Creal, Chief
Water Resources Division
Michigan Department of
Environmental Quality
P.O. Box 30473
Lansing, Michigan 48909

Re: Question regarding relocation of Sanitary Sewer Overflows to a Combined Sewer
Overflow Treatment Facility

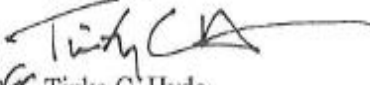
Dear Mr. Creal:

This letter is in response to questions raised in your April 12, 2012 letter. In your letter, you request clarification on what regulatory standards apply to a discharge from a wet weather treatment facility that receives flows from two independent sources, a sanitary sewer collection system and a combined sewer system, when the wet weather treatment facility is located prior to the headworks of a municipality's main secondary treatment plant.

Discharges from such a wet weather treatment facility are considered to be combined sewer overflows (CSOs), when the wet weather treatment facility only receives flows from a combined sewer collection system. CSOs are subject to effluent limitations based on BAT/BCT or any more stringent limitations necessary to attain water quality standards. However, discharges from a wet weather treatment facility that directly accepts flows from multiple collection systems, including flows from a sanitary sewer collection system as well as from a combined sewer system, and mixes the flows from the different collection systems, would be subject to effluent limitations based on the secondary treatment regulations or any more stringent limitations necessary to attain water quality standards. Thus, in the scenario outlined in your letter, involving flows from a sanitary sewer system being routed directly to a CSO retention treatment facility, discharges from that facility would be subject to effluent limitations based on the secondary treatment regulations or more stringent limitations necessary to attain water quality standards.

We hope that this letter will assist the Michigan Department of Environmental Quality in resolving questions regarding this issue. Please contact Patrick Kuefler, at (312) 353-6268, if you have any questions.

Sincerely,


For Tinka G. Hyde
Director, Water Division

cc: Mr. Pete Ostlund, MDEQ
Mr. Phil Argiroff, MDEQ
Mr. Dave Feidler, MDEQ